

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Federal-State Joint Board on |) | CC Docket No. 96-45 |
| Universal Service |) | |
| |) | |
| 1998 Biennial Regulatory Review – Streamlined |) | CC Docket No. 98-171 |
| Contributor Reporting Requirements Associated |) | |
| with Administration of Telecommunications |) | |
| Relay Service, North American Numbering Plan, |) | |
| Local Number Portability, and Universal Service |) | |
| Support Mechanisms |) | |
| |) | |
| Telecommunications Services for Individuals with |) | CC Docket No. 90-571 |
| Hearing and Speech Disabilities, and the |) | |
| Americans with Disabilities Act of 1990 |) | |
| |) | |
| Administration of the North American Numbering |) | CC Docket No. 92-237 |
| Plan and North American Numbering Plan Cost |) | NSD File No. L-00-72 |
| Recovery Contribution Factor and Fund Size |) | |
| |) | |
| Number Resource Optimization |) | CC Docket No. 99-200 |
| |) | |
| Telephone Number Portability |) | CC Docket No. 95-116 |

To: The Commission

REPLY COMMENTS OF CINGULAR WIRELESS LLC

Cingular Wireless LLC (“Cingular”) hereby submits its reply comments in the above-captioned proceeding.¹ Cingular responds herein only to certain issues raised by other commenters. Specifically, Cingular urges the Commission to retain a revenue-based assessment

¹ *Federal State Joint Board on Universal Service; 1998 Biennial Regulatory Review; Telecommunications Services for Individuals with Hearing and Speech Disabilities; Administration of the North American Numbering Plan; Number Resource Optimization; Telephone Number Portability*, Notice of Proposed Rulemaking, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, FCC 01-145 (rel. May 8, 2001) (the “NPRM”).

methodology and continue to allow wireless carriers to use the safe harbor to allocate revenues to the interstate jurisdiction. Further, Cingular demonstrates that the proposals to limit carrier recovery of contributions through a prescribed percentage or line-item amount are unworkable and should be rejected.

I. Assessment of Universal Service Contributions

A. Assessment Basis

The majority of parties filing initial comments, representing a wide range of stakeholders in the proceeding, supported Cingular's position that a revenue-based assessment mechanism should be retained, and the flat-fee proposal should be rejected. For example, large incumbent local exchange carriers,² small and rural incumbent local exchange carriers,³ competitive local carriers,⁴ wireless carriers,⁵ and a state public utilities commission⁶ agreed with Cingular's basic position on this issue.

By contrast, those opposing a revenue-based assessment and/or favoring the flat-fee proposal were generally parties that would benefit most from a reallocation of the universal service burden, including interexchange carriers and high-volume users of interexchange

² See, e.g., BellSouth Comments at 4; SBC Comments at 14; Verizon Affiliated Local Telephone Companies Comments at 2-4. See also NECA Comments at 2-3.

³ See, e.g., NTCA Comments at 2-3, OPASTCO Comments at 5-7. See also NECA Comments at 2-3.

⁴ See, e.g., BBG Communications Comments at 5-6; BT North America Comments at 7-8; IDT Corp. Comments at 4-5; EPIK Communications Comments at 2-3.

⁵ See, e.g., Arch Comments at 5-6; CTIA Comments at 3; Verizon Wireless Comments at 14-15.

⁶ Iowa Utilities Board Comments at 2.

services.⁷ WorldCom, for example, argues that the existing system “has placed an unfair burden on particular classes of carriers – particularly, established long distance carriers – and their customers” and that this “bias” violates the principles of equitability and competitive neutrality.⁸ However, the Commission’s jurisdiction to assess federal universal service contributions, however, is directly tied to the provision of interstate telecommunications.⁹ As such there is nothing inequitable or discriminatory about an assessment mechanism that “measure[s] the amount of interstate telecommunications services provided by each carrier.”¹⁰ It is entirely appropriate that long distance carriers, with their greater share of interstate revenues, pay a greater share of universal service contributions.

The record in response to the NPRM demonstrates that a revenue-based assessment mechanism is the fairest, most competitively neutral assessment mechanism for universal service contributions.

B. CMRS Safe Harbor

Although parties took different positions in the initial comments on the existing safe harbor for estimating CMRS carriers’ proportion of interstate revenues, no data were presented to support eliminating or changing the safe harbor. Some parties asserted that CMRS carriers’ bundled local and long distance packages are causing an increase in the proportion of CMRS

⁷ See, e.g., Ad Hoc Telecommunications Users Committee Comments at 26-27; AT&T Comments at 11-13; WorldCom Comments at 16-17.

⁸ WorldCom comments at 3.

⁹ 47 USC § 254(d); *Texas Office of Public Utility Counsel v. FCC*, 201 F.3d 608 (5th Cir. 1999).

¹⁰ NPRM at para. 17.

carriers' revenues that are interstate.¹¹ Significantly, however, no party has presented any evidence in support of this proposition. Indeed, as Verizon Wireless points out, wireless traffic has been growing overall, so that the growth in intrastate usage has likely matched or exceeded any growth that may have occurred in interstate usage.¹² This is particularly true given the decline in rates for long distance traffic.¹³ Thus, there is no reason to believe that any change to the safe harbor percentage is necessary.

As Cingular noted in its initial comments, without the safe harbor wireless carriers would have significant difficulty allocating their revenues between the jurisdictions. The reasons that the safe harbor was a reasonable approach when it was adopted remain true today.¹⁴ The wireless safe harbor should be retained and not adjusted upward.

II. Recovery of Universal Service Contributions

Although some commenters favored the proposals in the NPRM or made similar proposals to prescribe a universal service recovery rate or amount,¹⁵ no party addressed Cingular's concern that carriers' bundled service offerings make a prescribed recovery rate

¹¹ See, e.g., Excel Communications Comments at 13; Iowa Utilities Board Comments at 2-3; NTCA Comments at 4.

¹² Verizon Wireless Comments at 6-7. See also *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, Fifth Report, 15 FCC Rcd 17660, 17681-17682 (2000).

¹³ Verizon Wireless Comments at 7.

¹⁴ See also Arch Comments at 3.

¹⁵ See, e.g., Ad Hoc Telecommunications Users Committee Comments at 28; ACUTA Comments at 2; AT&T Comments at 3-4; NASUCA Comments at 2-3; SBC Comments at 2-4.

unworkable.¹⁶ Not all customer revenues are interstate telecommunications revenues.¹⁷

Application of the prescribed assessment amount to the bill of a customer purchasing a bundled package would thus result in recovery of an excessive amount and would exceed the Commission's jurisdiction by assessing contributions on intrastate revenues. Moreover, the carrier and customer confusion that would result from any effort to apply a prescribed recovery percentage only to the interstate portion of the bill, particularly where the bill includes bundled services, would outweigh any benefit, in uniformity or otherwise, that might result from a prescribed recovery amount. Thus, the Commission should retain its existing restrictions on carrier recovery of contributions, and not impose additional, unnecessary restrictions.

CONCLUSION

As Cingular noted in its initial comments, the proposals in the NPRM, rather than simplifying or streamlining the assessment process, would substantially complicate it. The record does not support any change to the existing system, and Cingular urges the Commission to retain it.

Respectfully submitted,

By: _____ /s/
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¹⁶ For the reasons discussed above, Cingular opposes a flat-rate assessment mechanism. *See supra* section I.A.

¹⁷ Bundled packages of services may include, in addition to interstate telecommunications services, either intrastate telecommunications services or non-telecommunications services (such as information services), or both. For example, wireless service packages may include such information services as voice mail or wireless Internet access.

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